

Department of Veterans Affairs

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(c) *Mailing address.* Except as otherwise noted in these Rules, mail to the Board must be addressed to: Chairman (01), Board of Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC 20420.

(Authority: 38 U.S.C. 7101(a))

§ 20.101 Rule 101. Jurisdiction of the Board.

(a) *General.* All questions of law and fact necessary to a decision by the Secretary of Veterans Affairs under a law that affects the provision of benefits by the Secretary to veterans or their dependents or survivors are subject to review on appeal to the Secretary. Decisions in such appeals are made by the Board of Veterans' Appeals. In its decisions, the Board is bound by applicable statutes, the regulations of the Department of Veterans Affairs and precedent opinions of the General Counsel of the Department of Veterans Affairs. Examples of the issues over which the Board has jurisdiction include, but are not limited to, the following:

(1) Entitlement to, and benefits resulting from, service-connected disability or death (38 U.S.C. chapter 11).

(2) Dependency and indemnity compensation for service-connected death, including benefits in certain cases of inservice or service-connected deaths (38 U.S.C. 1312) and certification and entitlement to death gratuity (38 U.S.C. 1323).

(3) Benefits for survivors of certain veterans rated totally disabled at time of death (38 U.S.C. 1318).

(4) Entitlement to nonservice-connected disability pension, service pension and death pension (38 U.S.C. chapter 15).

(5) All-Volunteer Force Educational Assistance Program (38 U.S.C. chapter 30).

(6) Training and Rehabilitation for Veterans with Service-Connected Disabilities (38 U.S.C. chapter 31).

(7) Post-Vietnam Era Veterans' Educational Assistance (38 U.S.C. chapter 32).

(8) Veterans' Educational Assistance (38 U.S.C. chapter 34).

(9) Survivors' and Dependents' Educational Assistance (38 U.S.C. chapter 35).

(10) Veterans' Job Training (Pub. L. 98-77, as amended; 38 CFR 21.4600 *et seq.*).

(11) Educational Assistance for Members of the Selected Reserve (10 U.S.C. chapter 106).

(12) Educational Assistance Test Program (10 U.S.C. chapter 107; 38 CFR 21.5701 *et seq.*).

(13) Educational Assistance Pilot Program (10 U.S.C. chapter 107; 38 CFR 21.5290 *et seq.*).

(14) Matters arising under National Service Life Insurance and United States Government Life Insurance (38 U.S.C. chapter 19).

(15) Payment or reimbursement for unauthorized medical expenses (38 U.S.C. 1728).

(16) Burial benefits and burial in National Cemeteries (38 U.S.C. chapters 23 and 24).

(17) Benefits for persons disabled by medical treatment or vocational rehabilitation (38 U.S.C. 1151).

(18) Basic eligibility for home, condominium and mobile home loans as well as waiver of payment of loan guaranty indebtedness (38 U.S.C. chapter 37, 38 U.S.C. 5302).

(19) Waiver of recovery of overpayments (38 U.S.C. 5302).

(20) Forfeiture of rights, claims or benefits for fraud, treason, or subversive activities (38 U.S.C. 6102-6105).

(21) Character of discharge (38 U.S.C. 5303).

(22) Determinations as to duty status (38 U.S.C. 101(21)-(24)).

(23) Determinations as to marital status (38 U.S.C. 101(3), 103).

(24) Determination of dependency status as parent or child (38 U.S.C. 101(4), (5)).

(25) Validity of claims and effective dates of benefits (38 U.S.C. chapter 51).

(26) Apportionment of benefits (38 U.S.C. 5307).

(27) Payment of benefits while a veteran is hospitalized and questions regarding an estate of an incompetent institutionalized veteran (38 U.S.C. 5503).

(28) Benefits for surviving spouses and children of deceased veterans under Public Law 97-377, section 156 (38 CFR 3.812(d)).

(29) Eligibility for automobile and automobile adaptive equipment assistance (38 U.S.C. chapter 39).

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(b) *Appellate jurisdiction of determinations of the Veterans Health Administration.* The Board's appellate jurisdiction extends to questions of eligibility for hospitalization, outpatient treatment, and nursing home and domiciliary care; for devices such as prostheses, canes, wheelchairs, back braces, orthopedic shoes, and similar appliances; and for other benefits administered by the Veterans Health Administration. Medical determinations, such as determinations of the need for and appropriateness of specific types of medical care and treatment for an individual, are not adjudicative matters and are beyond the Board's jurisdiction. Typical examples of these issues are whether a particular drug should be prescribed, whether a specific type of physiotherapy should be ordered, and similar judgmental treatment decisions with which an attending physician may be faced.

(c) *Appeals as to jurisdiction.* All claimants have the right to appeal a determination made by the agency of original jurisdiction that the Board does not have jurisdictional authority to review a particular case. Jurisdictional questions which a claimant may appeal, include, but are not limited to, questions relating to the timely filing and adequacy of the Notice of Disagreement and the Substantive Appeal.

(d) *Authority to determine jurisdiction.* The Board may address questions pertaining to its jurisdictional authority to review a particular case, including, but not limited to, determining whether Notices of Disagreement and Substantive Appeals are adequate and timely, at any stage in a proceeding before it, regardless of whether the agency of original jurisdiction addressed such question(s). When the Board, on its own initiative, raises a question as to a potential jurisdictional defect, all parties to the proceeding and their representative(s), if any, will be given notice of the potential jurisdictional defect(s) and granted a period of 60 days following the date on which such notice is mailed to present written argument and additional evidence relevant to jurisdiction and to request a hearing to present oral argument on the jurisdictional question(s). The date of mailing of the notice will be presumed to be

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the same as the date stamped on the letter of notification. The Board may dismiss any case over which it determines it does not have jurisdiction.

(e) *Application of 38 CFR 19.9 and 20.1304.* Section 19.9 of this chapter shall not apply to proceedings to determine the Board's own jurisdiction. However, the Board may remand a case to an agency of original jurisdiction in order to obtain assistance in securing evidence of jurisdictional facts. The time restrictions on requesting a hearing and submitting additional evidence in § 20.1304 of this part do not apply to a hearing requested, or evidence submitted, under paragraph (d) of this section.

(Authority: 38 U.S.C. 511(a), 7104, 7105, 7108)

[57 FR 4109, Feb. 3, 1992, as amended at 66 FR 53339, Oct. 22, 2001]

§ 20.102 Rule 102. Delegation of authority—Rules of Practice.

(a) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 717(d) and 1001(c) (§§ 20.717(d) and 20.1001(c) of this part) may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board.

(b) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 2 and 606(d) (§§ 20.2, and 20.606(d) of this part), may also be exercised by the Vice Chairman of the Board; by Deputy Vice Chairmen of the Board; and, in connection with a proceeding or motion assigned to them by the Chairman, by a Member or Members of the Board.

(Authority: 38 U.S.C. 512(a), 7102, 7104)

[57 FR 4109, Feb. 3, 1992; 57 FR 20055, May 11, 1992; 57 FR 38443, Aug. 25, 1992; 61 FR 20449, May 7, 1996; 70 FR 8930, Feb. 24, 2005]

§§ 20.103–20.199 [Reserved]

Subpart C—Commencement and Perfection of Appeal

§ 20.200 Rule 200. What constitutes an appeal.

An appeal consists of a timely filed Notice of Disagreement in writing and, after a Statement of the Case has been